Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1977

NO. 77-794

RONALD R. SILVERTON,

Appellant,

vs.

STATE OF CALIFORNIA,

Appellee.

APPEAL FROM
CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION FOUR

JURISDICTIONAL STATEMENT

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IN THE
SUPREME COURT
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October Term 1977

No. _____

RONALD R. SILVERTON,

Appellant,

vs.

STATE OF CALIFORNIA,

Appellee.

JURISDICTIONAL STATEMENT[1/]

Appellant is appealing from the judgment of the Court of Appeal of the State of California, Second Appellate District, Division Four, filed

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1/ Abbreviations Used Herein: RI - Reporter's Transcript of first trial; RII - Reporter's Transcript of second trial; RP - Reporter's Transcript of pretrial; RP-A - Reporter's Transcript of pretrial different pages from RP; AOB - Appellant's Opening brief to the Court of Appeal; RB - Respondent's Brief to the Court of Appeal; CT - Clerk's Transcript; AO - Appellate Court Opinion.

July 15, 1977. This judgment affirmed appellant's conviction of the crime of "advertising for adoption without a license between 3 Oct. 73 and 7 Oct. 73" in violation of California Civil Code Section 224p; and a sentence of appellant to six months in the Los Angeles County Jail on said conviction.

This Jurisdictional Statement is submitted by appellant to show that your Honorable Supreme Court of the United States has jurisdiction of this appeal; and that a substantial question is presented.

OPINION BELOW

The judgment from which this appeal is taken is set forth in the opinion of the Court of Appeal of the State of California, Second Appellate District, Division Four, filed on July 15, 1977; and is numbered "2 Crim. No. 28211."

The part of said judgment from which this appeal is taken, is that part which affirms appellant's conviction by the Los Angeles Superior Court, sitting in a jury trial (Superior Court No. A-308 468) of Count VII, Advertising for Adoption Without a License between 3 October 73 and 7 October 73, in violation of California Civil Code Section 224p.

The afore-opinion of the Court of Appeal is appended as Appendix "A" at the end of this Jurisdictional Statement. Said opinion was "certified for publication." Thereafter, the highest California State Court, the Supreme Court

on September 8, 1977, denied appellant's timely filed Petition for Hearing, and in said denial directed "The Reporter of Decisions... not to publish in the Official Appellate Reports the opinion" of the Court of Appeal.

GROUNDS OF JURISDICTION

(a) An appeal is here brought to question the conviction of appellant and his sentence to six months in the Los Angeles County Jail for violating California Code of Civil Procedure Section 224p on the grounds that said State law:

(1) Is so facially overbroad as to infringe free speech as guaranteed by the First Amendment to the United States Constitution.

(2) As applied to appellant, infringed appellant's rights of free speech as guaranteed by the First Amendment to the United States Constitution.

(b) The judgment here sought to be reviewed was one by the Court of Appeal of the State of California, Second Appellate District, Division Four, filed on July 15, 1977. A timely filed Petition for Rehearing filed in said Court was denied, without opinion, on July 26, 1977. Thereafter, on September 8, 1977, the highest State Court, the Supreme Court of California, denied a timely filed Petition for Hearing (Where

the highest State Court has jurisdiction to review a decision of a lower State Court, but refuses to do so, the time for filing an appeal extends from the date of refusal to review. American Railway Express Co. v. Levee, 263 U.S. 19, 20-21, 68 L.Ed. 140, 44 S.Ct. 11.)

The notice of appeal to this court was filed in the California Court of Appeal, 2nd Appellate District on Nov. 29, 1977. 1(b)/

(c) The jurisdiction of the Supreme Court to hear this appeal rests upon 28 USC § 1257(2). This statute permits review of the judgment of the highest court of a state in which a decision could be had, by appeal, where the validity of a statute of a state is drawn into question on the grounds of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity.

THE STATUTE INVOLVED

California Civil Code Section 224p, states:

"§ 224p. Misdemeanor to Advertise to Place Children for Adoption--When.

"Any person or organization that, without holding a valid and unrevoked license or permit to place children for adoption issued by the State Department of Health, advertises in any periodical or newspaper, by radio, or other public

1(b)/ See Appendix "G" Notice of Appeal to the Supreme Court of the United States filed in the Court of Appeal of the State of California on Nov. 29, 1977.

medium, that he or it will place children for adoption, or accept, supply, provide or obtain children for adoption, or that causes any advertisement to be published in or by any public medium soliciting, requesting, or asking for any child or children for adoption is guilty of a misdemeanor."

QUESTIONS PRESENTED

(1) Whether California Civil Code Section 224p is so facially overbroad as to infringe free speech as guaranteed by the First Amendment to the United States Constitution.

(2) Whether California Civil Code Section 224p, as applied to appellant, infringed appellant's rights of free speech as guaranteed by the First Amendment to the United States Constitution.

STATEMENT OF THE CASE

The charge in question was brought against appellant as Count VII of the indictment by the Grand Jury of the County of Los Angeles. This count stated:

"For a further and separate cause of action, being a different offense of the same class of crimes and offenses as

the charges set forth in all the preceding counts hereof, the said Ronald R. Silverton and Beverly Minnis are accused by the Grand Jury of the County of Los Angeles, State of California, by this indictment, of the crime of ADVERTISING WITHOUT A LICENSE, a misdemeanor, in Violation of 224p Civil Code committed prior to the finding of this indictment, and as follows:

"During the period beginning on or about October 3, 1973, and ending on or about the 7th day of October, 1973, at and in the County of Los Angeles, State of California, the said defendant,

"RONALD R. SILVERTON and BEVERLY MINNIS, did wilfully and unlawfully advertise and cause to be advertised and published in a periodical, newspaper and other public medium, to wit, the Los Angeles Times, an advertisement offering to place, soliciting, requesting, and asking for any child and children for adoption."

At the earliest possible time, at appellant's first appearance in the trial court on the charges, when the appellant was brought to court for purpose of arraignment, the appellant filed a demurrer to Count VII challenging California Civil Code Section 224p as written and as applied to appellant, as infringing constitutionally protected

speech under the First Amendment to the Federal Constitution (as made applicable to the State by the Fourteenth Amendment to the United States Constitution, Schneider v. State (1939) 308 U.S. 147, 160, 84 L.Ed. 155, 60 S.Ct. 146). In California unconstitutionality of a statute satisfies the requirements for demurrer - California Penal Code Section 1004(4) - that there is no public offense stated. People v. Smith (1955) 113 Cal. App. 2d 777, 28 P.2d 203 (CT 458-498 at p. 475-479).

The demurrer was denied (CT 522) and appellant petitioned the appellate court for a Writ of Prohibition to prevent the prosecution on the unconstitutional statute. People v. Silverton, 2nd Civ. 45016. This Petition was denied without opinion. Thereafter appellant filed a timely petition for Writ of Prohibition to the California Supreme Court on the same ground (same case name and number as in the Appellate Court, supra). This was also denied without opinion.

Appellant went through a jury trial, and on the conclusion of it, the jury found defendant guilty of a violation of Count VII. Thereafter, the unconstitutionality of the present statute, as written and as applied to appellant, was raised in the appellant's motion for new trial (CT 1021-1127 at pp. 1041 and 1042) which motion was denied (CT 1140). Said unconstitutionality was then raised in the California Court of Appeal, Second Appellate District, Division 4, by brief in a timely filed appeal of the conviction.

The conviction on Count VII was affirmed by the California Court of Appeal in an opinion filed on July 15, 1977. This opinion is appended as Exhibit "A" to this statement. An excerpt from said opinion is here appropriate to succinctly show how the constitutional issues were raised by appellant; and that the Court upholds the constitutionality of the statute in question (California Civil Code § 224p) by looking to the activities of defendant rather than to the words of the ad:

> "The court sentenced defendant as follows: On County VII - 6 months in the county jail; ....
>
> "Defendant posted bond on appeal.
>
> "Defendant appeals, raising a number of points.
>
> "First, defendant contends 'the statute forming the basis of County VII was unconstitutional as written and/or as applied to defendant.' We disagree.
>
> "Defendant first raised this point by demurrer (Pen. Code § 1004) to the indictment, his demurrer being overruled, and the Supreme Court denied a hearing to defendant, as did this Court."
> (Page 4 of Opinion.)
>
> "Civil Code § 224p reads: 'Any person or organization that, without holding a valid and unrevoked license or permit

to place children for adoption issued by the State Department of Health, advertises in any periodical or newspaper, by radio, or other public medium that he or it will place children for adoption, or accept, supply, provide or obtain children for adoption, or that causes any advertisement to be published in or by any public medium soliciting, requesting, or asking for any child or children for adoption is guilty of a misdemeanor.'

"The ad placed by defendant (People's Exh. 9-D-1) reads:

> 'Problem Pregnancy. May we help? Free prenatal care. Work suitable to pregnancy. Save-A-Life Adoption Service. 213-631-3109. 24 hours.'

"It is apparent that, to find any violation of the statute, one must look to the evidence. This shows that defendant held no license or permit from the State Department of Health to run an adoption service, and that the business of Save-A-Live (defendant) was obtaining children for adoption. (A projected earnings record of this agency showed it expected to make over $3 million in 24 months."
(Page 5 of Opinion.)

"...defendant contends the statute is 'facially overbroad' as written, arguing that the statute's terms are vague and indefinite....

"Civil Code § 224p does not violate the United States Constitutional First Amendment right of free speech and press, although defendant argues that it does, saying that: 'The First Amendment to the United States Constitution protects the right of free speech and press; and unquestionably identifies this right with the right of a private citizen to put an advertisement through a public medium.' While we agree that the First Amendment correlates the right of free speech and press with the right of a private citizen to place an advertisement, it does not mean that any advertisement is appropriate."
(Page 6 of Opinion.)

"...Civ. Code § 224p is a part of the regulatory scheme for adoptions and regulation is a valid exercise of the state's police power to insure that the choice to seek or provide the child for adoption is made without interference by an unlicensed agency, among others.

"We conclude that the state interest in preventing advertising by unlicensed adoption agencies outweighs any First Amendment rights of such agency. Save-A-Life was not an agency licensed

by the State Department of Health; it, as well as defendant, its principal, acted illegally, therefore."
(Pages 7 and 8 of Opinion.)

Appellant filed a timely Petition to the California Supreme Court, the highest tribunal of the State of California, to hear the matter of appellant's appeal. This Petition was denied without opinion on September 8, 1977. Within ninety (90) days from this denial, the appeal to this Honorable United States Supreme Court was filed.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The California Appellate Court in its opinion that the statute (California Civil Code § 224p) was not unconstitutional as written, and/or applied to defendant (AO 4) incorrectly decided in favor of its validity. This, despite the fact that the California Appellate Court agreed with appellant's contention that: "...the First Amendment (of the United States Constitution) correlates the right of free speech and press with the right of a private citizen to place an advertisement..." (AO bottom of p. 6 - top of p. 7).

A. THE STATUTE, CALIFORNIA CIVIL CODE § 224p IS UNCONSTITUTIONAL AS WRITTEN

As the United States Supreme Court stated in Bigelow v. State of Virginia (1975) 421 U.S. 809, 95 S.Ct. 222, 44 L.Ed.2d 600, a case which has very marked similarities to this instant matter (in that case the court held that a state statute making it a misdemeanor for the sale or circulation of any publication to encourage or prompt the processing of an abortion was so facially overbroad as to infringe constitutionally protected free speech):

> "This Court often has recognized that a defendant's standing to challenge a statute on First Amendment grounds as facially overbroad does not depend upon whether his own activity is shown to be constitutionally privileged. The Court consistently has permitted 'attacks on overly broad statutes with no requirement that the person making the attack demonstrates that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity.' (authorities cited)"
> (421 U.S. 815)

Thus, before we look to the evidence against appellant, we may examine whether the statute by its terms is so overbroad as to infringe on constitutionally privileged activity.

How can a statute constitutionally ban the use of a public medium to make a request which the law specifically permits? Nobody would seriously contend that a natural mother could not interview prospective adopting parents before she places her child herself, as is permitted by California Civil Code § 224q.[2] (Also see adoption procedures in Los Angeles County.)[3] And suppose the natural mother is an unwed teenager. Would the law preclude an assist to her in the announcement of the interview by someone of her

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2/ § 224q:

"Misdemeanor to Place Children for Adoption--When. Any person other than a parent or any organization, association, or corporation that, without holding a valid and unrevoked license or permit to place children for adoption issued by the State Department of Health, places any child for adoption is guilty of a misdemeanor." (Emphasis added.)

3/ The publication Adoption Procedures in Los Angeles County Superior Court amended effective January 1, 1973, on p. 19 thereof, provides:

"INDEPENDENT ADOPTIONS (C.C. 226). Definition: An independent adoption is one in which the child to be adopted is placed by its parent or parents who consent to its adoption by specific individuals" -- See Appendix "B" for complete transcription thereof.

choice--her parents, her minister, her doctor, etc.?

And what about a couple who desire to be considered as adoptive parents? There is no ban upon their contacting the natural parents directly. ("The Committee is of the opinion that there is a legitimate place for the true independent adoption ...." Report of the Assembly Interim Committee on Judiciary--House Resolution No. 197, 1953, dated March 1955, Chapter III, Subsection, Adoptions, Page 36, et seq.). So, why can't they contact the natural parent via the public medium, by an advertisement placed there by themselves or by an agent? Can the statute legally (constitutionally) make the expression of a request, permissible if made directly, a crime by virtue of it being made via a public medium? Appellant thinks not.

California Civil Code § 224p is so broad that the Court and jury is left with the function of stepping inside of the net to see who could be rightfully detained and who should be set at large. Not only is the "unlicensed agency" prevented from advertising, but so is the natural mother, and anyone she may desire to assist her, such as parents, minister, lawyer, etc., prevented from advertising regarding prospective adoptive parents. Equally so limited is the couple who desires to be considered as adoptive parents.

The California statutes regulating adoption clearly contemplate two rather dissimilar processes by which they may be effected. On the one hand, there may be relinquishment to a licensed

adoption agency pursuant to Chapter 2 of the Civil Code, § 224m.[4] The agency is thereafter responsible for the care of the child and is entitled to its custody and control at all times until a petition for adoption has been granted. It effects placement for temporary care or for adoption and terminates the same at its discretion at any time prior to the granting of a petition for adoption. No petition may be filed to adopt a child so relinquished except by the prospective adoptive parents with whom the child has been placed for adoption by the agency, Civil Code § 224n.[5] The consent of the natural parents is not required, Civil Code § 224(3).[6] Thus, agency adoption contemplates relinquishment of a child which is sometimes followed by the separate and independent act of agency placement for adoption. The natural parents have chosen to end their participation in the life of the child and have no part in, or indeed knowledge of, the subsequent proceedings by which placement for adoption may be effected.

Chapter 2 of the California Civil Code also contains provision for so-called independent adoption by the natural parents; these provisions are interleafed with those relating to agency adoptions. Section 224 (see fn. 6, supra) provides

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4/ See Appendix "C"--California Civil Code § 224m.

5/ See Appendix "D"--California Civil Code § 224n.

6/ See Appendix "E"--California Civil Code § 224.

for the consent of the natural parents, except in certain circumstances where the natural parents have, by conduct, disentitled themselves to control of the child; and, of course, except when the child has been relinquished to a licensed agency. There are rather detailed provisions for the taking of the consent which becomes a part of the judicial record. Civil Code § 226.[7] This separate and distinct procedure is recognized in the phrase "independent adoption of a child" appearing at page 19 in the Adoption Procedures in Los Angeles County." (See fn. 3, supra.) California's bifurcated adoption processes have been extensively discussed in the literature: Adopting a Child in California, Information Regarding Adoption Law and Procedure, 1953 revision, State of California Department of Social Welfare, p. 3, California practice Handbook No. 5 (sponsored by the State Bar of California and participating local bar association); Ten Broek, California's Adoption Law and Programs, 6 Hastings L.J. 261, 332033; Callister, The Lawyer and the Independent Adoption, 29 L.A. Bar Bulletin 375; Adams, Adoptions, Family Law for California Lawyers.

The right of the natural parent or parents to effect direct placement is confirmed by Civil Code § 224q. (See fn. 2, supra.)

California Civil Code § 224p, the statute in question here, sweeps within its ambit any expression of thought via a public medium concerning a private (independent) adoption. And, since private

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7/ See Appendix "F"--California Civil Code § 226.

adoptions are permitted by California Civil Code § 224q, (see fn. 2, supra) the limitation of California Civil Code § 224p provides unravelable enmeshment of constitutionally protected expression via a public medium concerning an independent adoption, with expression that may not be protected because its restraint is a lawful exercise of the police power of the state. So broad a statute compels the conclusion that the restriction imposed by the legislation is so overbroad as to be unconstitutional.

B. THE STATUTE, CALIFORNIA CIVIL CODE SECTION 224p, AS APPLIED TO DEFENDANT INFRINGED SPEECH PROTECTED BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

The Appellate Court's opinion properly concludes that the ad placed by defendant (People's Exh. 9-D-1)[8/] is innocent on its face, and that "to find any violation of the statute, one must look to the evidence." (AO 5)

8/ The ad placed by defendant (People's Exh. 9-D-1) reads:

"Problem pregnancy. May we help? Free prenatal care. Work suitable to pregnancy. Save-A-Life Adoption Service. 213-631-3109. 24 hours."

The Appellate Court's opinion states two substantial errors of law:

1) "...that the state interest in preventing advertising by unlicensed adoption agencies outweighs any First Amendment rights of such agency."
(AO 8, 2nd para., 2nd line,)

2) Since "...'Save-A-Life' was not an agency licensed by the State Department of Health; it as well as defendant, its principal, acted illegally therefor."
(AO 8, 2nd para., 2nd line.)

In Bigelow v. State of Virginia, supra, one of the reasons why the advertisement was held to be proper and not regulateable by the State of Virginia was that the activity advertised did not promote illegal activity in Virginia. The same factor is present in this case. The only activity the advertisement can be argued to have promoted was the activity in which appellant was involved.

At the time of the conviction of appellant on Count VII of the indictment (the instant conviction); appellant was also convicted on Count IX of the indictment--the crime of operating a home-finding agency without a license, and sentenced therefor to a consecutive five months in the Los Angeles County Jail. This conviction was reversed by the Appellate Court on the grounds that the Code Section on which the conviction was based was

decriminalized by the legislature (AO 10-11). In addition, on a second trial on the same indictment, appellant was convicted of conspiracy to commit the offenses of Count VII and IX of the indictment. This conviction was also reversed by the California Appellate Court on the implied grounds that you can't criminally conspire to do what you have a legal right to do (AO 11-12).

There was no determination by any fact-finding body, that withstood appellate scrutiny, to the effect that illegal activity in California would be promoted by the advertisement. Thus, the reasoning from Bigelow, supra, applies. To say the placing of the advertisement was in itself illegal activity promoted by the ad is circular reasoning.

In the case of Linmark Associates, Inc. v. Willingboro (May 2, 1977) ___ U.S. ___, 52 L.Ed.2d 155, 97 S.Ct. 1614, the First Amendment was held to be violated by an ordinance of the Township of Willingboro which prohibited the posting of real estate "For Sale" and "Sold" signs for the purpose of stemming what the township perceived as the flight of white homeowners from a racially integrated community. The Court reasoned that since the proscription applied to only one mode of communication it was not a valid exercise of the police power as to "time, place, or manner"; and that the First Amendment disabled the State from achieving its goal of an important governmental objective by restricting the free flow of truthful information.

Analogously to Linmark, in this instant case the question is whether the State of California's criminal sanctions against

appellant herein for the placing of an advertisement, which does not on its face offer adoption service, is a reasonable exercise of the state's police power and its interest in controlling adoptions. There is nothing in the ad placed by appellant that would create the atmosphere of "commodity trading" in children.

By its wording, the ad does no more than offer information and assistance to persons who may have a problem pregnancy, conveying information of potential interest and value to a diverse audience consisting of readers possibly in need of the services offered; and thus defendant's First Amendment interests coincided with the constitutional interests of the general public. Bigelow v. State of Virginia, supra. That the advertisers' interest in a commercial advertisement is purely economic does not disqualify him from protection under the First and Fourteenth Amendments to the United States Constitution. Both the individual consumer and society in general may have strong interests in the free flow of commercial information. V.A. Pharmacy Board v. V.A. Consumer Council (1976) 425 U.S. 748, 48 L.Ed. 346, 96 S.Ct. 1817 (this case held First Amendment protection was enjoyed by both advertisers and recipients with regard to media dissemination of prescription price information).

No claim can be made, supported by the record, that the advertisement was deceptive or fraudulent or that it was related to a wrongdoing. At most, an orientation against abortions could be inferred from the name of the organization. To assert more would be to say that we must either

(a) go behind the advertisement to seek out the intent with which it was placed; an approach which was specifically disapproved by the trial court:

> (i) The Court at the request of the District Attorney instruced the jury that in the crime charged in Count VII (violation of CC § 224p), the mere doing of the act is punishable as a crime. The intent with which the act is committed is immaterial to guilt (CT 831).
>
> (ii) Beverly Minnis, the person placing the ad for defendant, offered to testify that she had been informed by her husband, Norman Minnis, that the ad had been checked by the Legal Department of the Times (The Los Angeles Times was the newspaper in which the ad appeared) (RI 335, 18-25) and Beverly Minnis so informed the defendant (RI 1-4). Mr. Boyle and Mr. Mandoline, who "checked the ad" for the paper in which it was placed, (The Los Angeles Times, RI 277, 18-22), each were called by the defendant; and their testimony was offered to the effect that they pass on the advertisements that go into the paper and that the advertisement in question was "like many others, innocent from anybody's standpoint" (RI 2810-2821); and that it met the criteria to be accepted by the newspaper.

The Court would not permit the jury to hear any of the offered testimony. The Court stated:

> "Well, the placing of the ad certainly is an act. State of mind relative to the act, I don't believe is in issue here...and whether the person placing the ad was in a certain state of mind is not really controlling here" (RI 2824, 1-6).
>
> (iii) The court precluded defendant from introducing evidence of his receipt of advice from competent attorneys; which advice expressed the opinion of these attorneys, that the contents of the ad, and the placing of it in the newspaper, would be completely legal and proper (CT 703-705; 706; RI 320, 7-312, 18; 329, 9-330, 27; 330, 28-332, 2; 419, 21-24; 2991, 16-28; 3039, 4-21; 3041, 5-3044, 15; 3078, 108).
>
> (iv) The prosecutor, in his closing arguments, stated that only the doing of the act of participating in the placing of the ad is punishable, and that there was no need for the defendant to have a culpable state of mind, and further, he told the jury that the judge would instruct them to this effect (RI 3934, 70-3934, 4); and the judge did so instruct the jury (CT 831).

It is apparent from the above citations to the record that there was no admissible evidence of deceptiveness, fraud, or wrongdoing. Hence the only basis for the application of the statute (California Civil Code § 224p) to the defendant is his part in the dissemination of information, which conduct is protected in this instance by the First Amendment to the United States Constitution.

(b) Or say that an otherwise innocent advertisement may be rendered criminal because someone who reads the advertisement may be inspired by it to commit a criminal act. A state may not suppress the dissemination of concededly truthful information about entirely lawful activity, fearful of that information's effect upon its disseminators and its recipients, V.A. Pharmacy Board v. V.A. Consumer Council (1976) supra.

The provisions of California Civil Code § 224p, do not aim specifically at the "evil of inducement of private adoption by improper incentives" or some other defineable area of state control which could be constitutionally controlled by providing for court scrutiny and approval of adoptions.

The application of the statutory provisions to appellant, are not a reasonable exercise of police power in that the application to the appellant infringes his constitutional rights under the First Amendment when the public interests sought to be served could be achieved by less drastic means (such as the court scrutiny and approval of adoptions). The question is not how laudable are the aims sought to be served, but how reasonable are

the means used in the particular case. As this Honorable Court recently stated in striking down a New Hampshire statute prohibiting the covering of the state motto on state-issued license plates (wherein the State of New Hampshire argued unsuccessfully that its statute facilitated identification of passenger vehicles and promoted appreciation of history, individualism, and state pride):

> "Even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties, when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same purpose." Wooley v. Maynard (1977) 97 S.Ct. 1428, 51 L.Ed.2d 752.

CONCLUSION

Appellant submits that this appeal brings before the Court the substantial federal questions of:

(1) Whether the restriction on First Amendment Rights imposed by California Civil Code § 224p is so overbroad as to be unconstitutional; and

(2) Whether the defendant's First Amendment Rights were infringed by application to him of a statute (California Civil Code § 224p) which prohibited his dissemination of information which

was neither deceptive, fraudulent, nor advocated wrongdoing.

These questions require plenary consideration, with briefs on the merits and oral argument for their resolution.

Respectfully submitted,

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APPENDIX A

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. RONALD R. SILVERTON, Defendant and Appellant.	2 Crim. No. 28211 (Super Ct. No. A308468) Court of Appeal Second Dist. FILED Jul 15 1977 Clay Robbins, Jr. Clerk Deputy Clerk
In re RONALD R. SILVERTON on Habeas Corpus.	2 Crim. No. 30496 (Super. Ct. No. A308468)

APPEAL from a judgment of the Superior Court of Los Angeles County; petition for writ of habeas corpus. Thomas T. Johnson, Judge. Judgment affirmed in part; reversed in part; writ denied.

Ronald R. Silverton, in pro. per., for Defendant and Appellant.

Evelle J. Younger Attorney General, Jack R. Winkler, Chief Assistant Attorney General, S. Clark Moore, Assistant Attorney General, James H. Kline, and
(Page 2.)
Kathleen M. Crain, Deputy Attorneys General, for Plaintiff and Respondent.

This is an appeal from a judgment of conviction in the second trial of an indictment in 14 counts against appealing defendant and others, as follows: (count I) conspiracy to violate criminal laws, a felony, in violation of Pen. Code § 182, subd. 1; (count II) purchase of custody and the selling of a child to another on 19 Nov 73, felony, in violation of Pen. Code § 181; (count III) preparation of false documentary evidence on 19 Nov 73, a felony, in violation of Pen. Code § 134; (count IV) purchase of custody or selling of a child of another on 27 Dec 73, a felony, in violation of Pen. Code § 181; (count V) attempting, between 1 Dec 73 and 25 Jan 74, to sell a person, a felony, in violation of Pen. Code § 181; (count VI) attempting to sell a person to another between 3 Dec 73 and 1 Jan 74, a felony, in violation of Pen. Code § 181; (count VII) advertising without a license between 3 Oct 73 and 7 Oct 73, a misdemeanor, in violation of Civ. Code § 224p; (count VIII) unauthorized placement for adoption between 1 Jul 73 and 11 Jun 74, a
(Page 3.)
misdemeanor, in violation of Civ. Code § 224q; (count IX) operating between 1 Jul 73 and 31 Dec 73, a home-finding agency without a license, a

misdemeanor, in violation of Health & Saf. Code § 1310; (count X) operating without a license between 1 Jan 74 and 11 Jun 74, a community care facility and home-finding agency, a misdemeanor, in violation of Health & Saf. Code § 1508; (count XI) unlawful placement of a child for money between 1 Aug 73 and 31 Aug 73, a misdemeanor, in violation of Pen. Code § 273, subd. (a); (count XII) unlawful placement of a child for money between 1 Jul 73 and 1 Dec 73, a misdemeanor, in violation of Pen. Code § 273, subd. (a); (count XIII) unlawful placement of a child for money on 10 Oct 73, a misdemeanor, in violation of Pen. Code § 273, subd. (a); and (count XIV) unlawful placement of a child for money between 1 Dec 73 and 15 May 74, a misdemeanor, in violation of Pen. Code § 273, subd. (a). An amended indictment charged defendant with two prior felony convictions which he admitted; he denied guilt of any crime charged in the present indictment. However, a jury trial resulted in defendant's conviction on counts VII and IX and not guilty of counts X and XI; the trial court declared a mistrial. There was a retrial by the court on
(Page 4.)
count I, by stipulation, and defendant was adjudged guilty of it. Thereafter, on the People's motion, based upon a "disposition agreement" entered into at the time of the stipulation concerning count I, the court dismissed the remaining counts, i.e., 2, 3, 4, 5, 6, 8, 12, 13 and 14.

The court sentenced defendant as follows: on count VII - 6 months in the county jail; count IX - 5 months in the county jail, sentence as to counts VII and IX are to be consecutive with each

other; count I - 3 years' probation, defendant to spend the first 11 months in the county jail. Sentence as to count I to be concurrent with sentences in counts VII and IX.

Defendant posted bond on appeal.

Defendant appeals, raising a number of points.

First, defendant contends "the statute forming the basis of count VII was unconstitutional as written and/or as applied to defendant." We disagree.

Defendant first raised this point by demurrer (Pen. Code § 1004) to the indictment, his demurrer being overruled, and the Supreme Court denied a hearing to defendant, as did this court.

(Page 5.)

Civil Code § 224p reads: "Any person or organization that, without holding a valid and unrevoked license or permit to place children for adoption issued by the State Department of Health, advertises in any periodical or newspaper, by radio, or other public medium, that he or it will place children for adoption, or accept, supply, provide or obtain children for adoption, or that causes any advertisement to be published in or by any public medium soliciting, requesting, or asking for any child or children for adoption is guilty of a misdemeanor."

The ad placed by defendant (People's Exh. 9-D-1) reads:

"Problem Pregnancy. May we help? Free prenatal care. Work suitable to pregnancy. Save-A-Life Adoption Service. 213-631-3109. 24 hours."

It is apparent that, to find any violation of the statute, one must look to the evidence. This shows that defendant held no license or permit from the State Department of Health to run an adoption service, and that the business of Save-A-Life (defendant) was obtaining children for adoption. (A projected earnings record of this agency showed it expected to make over $3 million (Page 6.)
in 24 months.

Defendant contends the statute is "facially overbroad" as written, arguing that the statute's terms are vague and indefinite because the statute contains terms which have not been defined by the common law. Defendant says: "These terms at best are shop terms invented by social workers." However, our Evid. Code § 451 states: "Judicial notice shall be taken of: . . . . (e) The true signification of all English words and phrases and of all legal expressions." Evidence Code § 459 requires us to notice the meaning of the word "adoption" in its ordinary statutory sense.

Civil Code § 224p does not violate the United States constitutional First Amendment right of free speech and press, although defendant argues that it does, saying that: "The First Amendment to the United States Constitution protects the right of free speech and press; and unquestionably identifies this right with the right of a private

citizen to put an advertisement through a public medium." While we agree that the First Amendment correlates the right of free speech and press with the right of a private citizen to place an

(Page 7.)

advertisement, it does not mean that any advertisement is appropriate. Thus, in the case relied upon by defendant, as well as the People, i.e., Bigelow v. Virginia, 421 U.S. 809, 44 L.Ed.2d 600 (1975), the United States Supreme Court held a Virginia statute to be unconstitutional. However, that case involved an ad in the Virginia Weekly newspaper regarding a New York abortion service. As the court pointed out, Virginia could not prevent its citizens from going to New York and making such use of the services as need be. Here, no sister-state service was involved.

We are required to balance the interests of the state in restricting ads such as the present one, with the right of free speech and press. We belive that here the interests of the government prevail.

Defendant's brief concedes that "this right may be proscribed by a state legislature to prevent a specified evil."

The People state that Civ. Code § 224p is a part of the regulatory scheme for adoptions and regulation is a valid exercise of the state's police power to

(Page 8.)

insure that the choice to seek or provide the child for adoption is made without interference by an unlicensed agency. The People also cite

San Diego County Dept. of Public Welfare v. Superior Court, 7 Cal.3d 1, 15 (1972), among others.

We conclude that the state interest in preventing advertising by unlicensed adoption agencies outweighs any First Amendment rights of such agency. Save-A-Life was not an agency licensed by the State Department of Health; it, as well as defendant, its principal, acted illegally, therefore.

Second, defendant contends "the statute forming the basis of count IX (§ 1310 of the Health and Saf. Code) was not in effect during the period that the indictment states the defendant violated the statute."

Again, defendant first raised this point by demurrer to the indictment, his demurrer being overruled, and the Supreme Court denied hearing to defendant, as did this court.

Defendant argues that Health & Saf. Code § 1310 never became the law in California because it did not

(Page 9.)

become effective until January 1, 1974, the same date it was repealed. The People oppose this view and we agree with them. The People draw a distinction between "effective date" and "operative date" as those terms are used in statutory interpretation. (People v. Webb Bros., 139 Cal.App. 334, 336 [1934]; 56 Ops.Cal.Atty. Gen. 176-180 [1973]; also see County of Los Angeles v. Lamb, 61 Cal. 196 [1882].)

The People's brief states: "As amended on November 27, 1972, former section 1310 was part of Statutes 1972, Chapter 1148, Section 3, Subchapter 2, Article 4, p. 2230. Section 20 of Chapter 1148 provided that the foregoing provisions, including section 1310, 'shall become operative on the same date as Reorganization Plan No. 1 of 1970 becomes operative.' (Stats. 1972, c. 1148, Art. 8, p. 2243.) Pursuant to Statutes 1971, chapter 1217, section 3.5, Reorganization Plan No. 1 of 1970[19/] [fn. omitted] became operative on July 1, 1973. (AB 2528. See Statutory Record, 1969-1972, Stats. 1972, p. 511.) According to article IV, section 8, subd. (a) of the State Constitution as it then applied, the 'effective date' of these 1972 statutes, in contrast to their legislatively-prescribed 'operative date,' was sixty-one

days after the final adjournment of the 1972 regular session or March 7, 1973. [Para.] Thus, the effective date of the statutes enacted in the 1972 legislative session was not affected by the November 7, 1972 amendment to Article IV of the State Constitution which provided that all statutes, except those specified, would become effective on January 1 next following a 90-day period from the enactment date. . . . Amended Article IV, section 8(c)(1) became effective on November 8, 1972 (Const. Art. XVIII, § 4), but it did not become operative until January 8, 1973 with the start of the 1973 session. The laws emanating from the 1973 session would be the first to have effective dates calendared according to the amended constitutional provision. [Citation omitted.] [Para.] The operative period

of former section 1310 therefore commenced on July 1, 1973, and continued until the statute's repeal and re-enactment in amended form by Statutes 1973 . . . ."

In his reply brief, defendant asserts that Health & Saf. Code § 1310, having been repealed, his indictment for violating Health & Saf. Code § 1310 must be quashed. Defendant relies upon In re Estrada, 63 Cal. 2d 740 (1965) and People v. Rossi, 18 Cal. 3d 295

(1976). In Estrada, supra, 63 Cal. 2d at pp. 746-747, it is said that: "It is the rule at common law and in this state that when the old law in effect when the act is committed is repealed, and there is no saving clause, all prosecutions not reduced to final judgment are barred." And, in Rossi, supra, 18 Cal. 3d at p. 300, it is observed that: "As the United States Supreme Court has observed, it is 'the universal common-law rule that when the legislature repeals a criminal statute or otherwise removes the State's condemnation from conduct that was formerly deemed criminal, this action requires the dismissal of a pending criminal proceeding charging such conduct. The rule applies to any such proceeding which, at the time of the supervening legislation, has not yet reached final disposition in the highest court authorized to review it.' (Bell v. Maryland (1964) 378 U.S. 226, 230 [12 L. Ed. 2d 822, 826, 84 S. Ct. 1814].) In the instant case, this 'universal common-law rule' mandates the reversal of defendant's conviction."

We agree with defendant on this point and, accordingly, we must reverse his conviction of count IX.

In our case, since count I (conspiracy)
(Page 12.)
mentioned the acts barred by Health & Saf. Code § 1310 his conviction of count I must, also, be reversed. Thus, we are left with defendant's conviction of count VII.

As to all counts, defendant contends that the deputy district attorney failed to bring exculpatory evidence, within his knowledge, to the Grand Jury's attention, relying upon Johnson v. Superior Court, 15 Cal. 3d 248 (1975). We disagree. Johnson is not retroactive. (People v. McAlister, 54 Cal. App. 3d 918, 925-926 [1976].)

Second, defendant complains that the testimony of Joseph Spencer and John Mulrooney was known to the district attorney and was not brought before the Grand Jury. However, Spencer was out of state and an attempt to secure his presence here under the interstate compact was unavailing, due to Spencer's physical disability, which Spencer used to preclude his own presence here. Attorney John Mulrooney's testimony would not have aided the defendant.

Next, defendant contends he was denied a fair
(Page 13.)
trial because of prosecutorial misconduct before trial in that: (a) he was illegally detained by illegally high bail on the "recommendation" of the district attorney; (defendant asserts that bail was

set for $50,000 whereas the scheduled bail was only $5,000 bail); however, defendant was arrested by Palm Springs police officers on July 3, 1974, (the indictment in the present case was dated 14 Jun 74), for violation of Pen. Code §§ 181 and 182, subd. 1, and the fact that the district attorney's investigators assisted the Palm Springs officers and the further fact that defendant was jailed in the Los Angeles County jail is irrelevant in view of defendant's July 3 arrest; (b) the prosecution participated in disseminating prejudicial publicity about defendant; thus, a story was carried on local television regarding black market babies in which defendant was mentioned by name; one-half to three-quarters of a million people supposedly viewed this program and defendant's picture appeared in it as did a picture of the indictment returned against him; the trial court denied defendant's motion to dismiss and we do, too; in doing this, we have in mind our duty "'to make an independent evaluation of the circumstances'" in order to
(Page 14.)
determine if defendant has been given his due process rights to a fair trial. (People v. Sirhan, 7 Cal. 3d 710, 730 [1972].)

The circumstance of a single television show does not add up to the same massive circumstances appearing in defendant's cases of Irvin v. Dowd, 366 U.S. 717, 6 L. Ed. 2d 751 (1961), Estes v. Texas, 381 U.S. 532, 14 L. Ed. 2d 543 (1965), and Sheppard v. Maxwell, 384 U.S. 333, 16 L. Ed. 2d 600 (1966). Here, no juror testitied to an opinion regarding defendant's guilt or innocence or that such opinion, if any, could not be set aside, or

that any juror had seen the television show. The foregoing facts, if such they were, were not brought to the trial court's attention by voir dire, a motion for change of venue nor on defendant's motion for new trial; (c) defendant claims the prosecution "was guilty of bad faith in refusing to request immunity for a critical defense witness," Howard Passov. We disagree with defendant. Alderman v. United States, 394 U.S. 165, 22 L.Ed.2d 176 (1969); Brady v. Maryland, 373 U.S. 83, 19 L.Ed. 2d 215 (1963) and Barbee v. Warden, Maryland Penitentiary, 331 F.2d 842 (4th Cir. 1964), relied upon by defendant, are not in point.

(Page 15.)

Penal Code § 1324 makes it a matter within the district attorney's discretion to request, or not to request, immunity and the statute is constitutional. (People v. Traylor, 23 Cal.App.3d 323, 332 [1972]; People v. Williams, 11 Cal.App. 3d 1156, 1163-1164 [1970].)

Next, defendant contends that "lack of a speedy trial" barred his prosecution on count I. We already have set aside defendant's conviction on count I so that the present ground need not be discussed.

The court is directed to permit withdrawal of the dismissed counts. (People v. Kirkpatrick, 7 Cal.3d 480, 487 [1972].)

We grant the Attorney General's motion, filed 28 Oct 76, to judicially notice a record, No. CR12110, from Riverside County Superior Court. We deny defendant's petition for a writ

of habeas corpus. Defendant's convictions on counts I and IX are reversed. His conviction on count VII is affirmed.

CERTIFIED FOR PUBLICATION

DUNN, J.

We concur:

KINGSLEY, Acting P.J.

JEFFERSON (Bernard), J.

ADOPTION PROCEDURES

IN

LOS ANGELES COUNTY

SUPERIOR COURT

1968 REVISIONS

Prepared By

LESTER E. OLSON
Judge of the Superior Court
and
ETTORE CONTINI
Division Chief, Office of The County Clerk
Los Angeles

Amended Effective
January 1, 1973

II. INDEPENDENT ADOPTIONS (C.C. 226)

DEFINITION: An independent adoption is one in which the child to be adopted is placed by its parent or parents, who consent to its adoption by specific individuals.

A. Initiating the Proceeding: C.C. 226

1. A person desiring to adopt a child files a petition in the Superior Court of the county in which such person resides.

2. Upon obtaining all of the necessary data concerning the proposed adoptee and the petitioners, a petition for adoption should be prepared. The attorney should exercise great care in obtaining correct facts concerning full and exact names of the petitioners and the minor child and dates and places of birth. This information is made available to the attorney in a reliable fashion by the adoption agency in an agency adoption but such assistance is not available in an independent adoption. Care at this point will avoid the necessity of filing amendments at later stages of the proceeding.

3. Prepare the clients for the investigation by the Los Angeles County Department of Adoptions. The clients should know that the investigating agency will be required to submit a full report to the Court concerning the following:

A. The child:
   1. Legal name, date and place of birth.

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   2. Adjustment in the home.
   3. Child's attitude toward the adoption if old enough to express same.

B. The natural parents:
   1. Resume of parents' personal and marital history.
   2. Manner of dissolution of marriage.
   3. Statement as to the status of the consent of such natural parent.

C. The petitioner:
   1. Resume of personal history, former marriage or dissolution.
   2. Whether children of former marriage exist.
   3. Home and family situation.

(SUGGESTED FORM OF PETITION FOR INDEPENDENT ADOPTION)

Prepare original + 2. original for filing; copy for investigating agency (The Los Angeles County Department of Adoptions); copy for attorney's file

_____
Attorney for Petitioners)
Address_____
_____
Telephone_____

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF _____

In the Matter of the Adoption Petition of _____)
(insert full name including all middle) NO. AD - ____
_____) PETITION FOR
names -- do not use initials)) ADOPTION
and) (INDEPENDENT)
_____)
(insert full name including all middle)
_____)
names -- do not use initials))
Adopting parent(s).)
_____)

Petitioners allege:

1. The name by which the minor who is the subject of this petition was registered at birth is _____
(state name exactly as it appears on copy of _____
birth certificate)

[ATTORNEY - CAUTION: in Los Angeles County, the first paragraph of the petition must allege the minor's existing name because data processing is used to prepare the index, and the data processers are not permitted to search through other portions of the petition for the name of the adoptee.]

(Page 21)

2. The petitioners are husband and wife and reside in the County of _____, State of California, and desire to adopt the above named

minor child who was born in _____ on _____
(place)
_____19____. The petitioners are adult persons, more than ten years older than said minor.

3. The _____
(parent(s) entitled to sole custody)
of the child _____ placed the child
(has/have)
directly with the petitioners for adoption and _____ prepared to consent to the child's adop-
(is/are)
tion by petitioners.

[COMMENT: Under C.C. 200, only the consent of the natural mother is required for the adoption of an illegitimate child. If the parent(s) have been deprived of custody by an order of court (abandonment decree), such facts should be alleged in place of paragraph 3 above. Such other facts to bring the case within the exceptions set out in C.C. 224 should be alleged, such as where the parents have died.)

OR

3. No consent to adoption by any parent is required by reason of the fact that the parents/parent entitled to sole custody of the child (state facts to bring the case within the exceptions set out in C.C. 224 as per COMMENT above.).

4. The child is a proper subject for adoption. The petitioners' home is suitable for the child, and they are able to support and care for the child properly. The petitioners agree to treat the child in all respects as their own lawful child.

5. Each petitioner hereby consents to the adoption of the child by the other.

6. The petitioners will file promptly with the Los Angeles County Department of Adoptions information required by the department in the investigation of this adoption.

WHEREFORE, petitioners pray that the Court adjudge the adoption of the child by petitioners, declaring that each petitioner and the child shall thenceforth sustain toward each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation; and that the child shall be known as _____.
(new name of child)

Dated: _____

_____
Petitioner

_____
Petitioner

_____
Attorney for Petitioners

ORIGINAL PETITION SHOULD BE VERIFIED.

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(VERIFICATION - 446, 2015.5 C.C.P.)

State of California
County of Los Angeles ss.
I am the _____

_____
in the above entitled action; I have read the foregoing _____
and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

_____

_____

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on _____ at _____
(date)

_____, California.
(place)

_____
(Signature)

ATTORNEY PROCEDURE: After the petition has been executed and verified by the petitioners, file it with the County Clerk. A $5.00 filing fee is required for each child being adopted (effective March 7, 1973). Submit promptly to the Los Angeles County Department of Adoptions, 2550 West Olympic Boulevard, Los Angeles, Calif. 90005, the following:

1. Copy of Petition and court action number.
2. Information concerning natural parents and petitioners, including address and telephone number.
3. Certified copy of child's birth certificate.
4. Certified copies of marriage and divorce records of natural parents and petitioners.

COMMENT: After the attorney has proceeded as above, the Department of Adoptions will communicate with the petitioners and natural parents and commence a home study. It will obtain necessary consents and submit a report with recommendations and consents to the County Clerk within 180 days from the date of filing of petition,

unless circumstances require an earlier filing. In some instances, the Court may grant an extension of the 180-day period for filing of the court report. See C.C. 226.6. The Los Angeles County Department of Adoptions will ultimately file the required report and mail a copy thereof to the attorney of record.

ATTORNEY PROCEDURE: Upon receipt of a copy of the agency report, the attorney should immediately file a memorandum for setting (in duplicate) (on the printed form available from the Clerk's office) with the Clerk. The Court's policy is to have matters calendared as soon as possible after the filing of the agency report. Counsel failing to file the memorandum for setting as above are not cooperat-

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ing with the Court's policy. The attorney can request dates convenient to his calendar and that of the petitioners and such requests are accommodated to the greatest extent possible. At the present time, agency adoptions are heard in the Central District on Monday only. The practice of the courts in the regional districts varies and counsel should check with the local clerk's office if any special calendar problem exists.

The Clerk's office will return the duplicate copy of the memorandum for setting, indicating the date and time set for the hearing. Counsel should notify the agency of the date and time, since some agencies have a representative attend the hearing.

The petitioners and the child subject to the adoption must attend the hearing (unless excused pursuant to C.C. 227). It is important for counsel to specifically mention this requirement to the

petitioners when advising them of the date and time of the hearing, since it can be most embarrassing to have them required to make another trip to court just to bring the child.

Before the hearing, the attorney should prepare:

1. Accounting Report:

C.C. 224r requires the petitioners to account for all disbursements, including medical expenses, agency fees and attorneys' fees, made or promised to be made in connection with the placement and adoption of children. A suggested form of accounting report is set forth below.

(SUGGESTED FORM OF ACCOUNTING REPORT
Prepare original and 1: original for Court
copy for attorney's file

_____
Attorney for Petitioner(s)
Address_____
_____
Telephone_____

SUPERIOR COURT OF THE STATE
OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In the Matter of the Adoption Petition
of_____) NO.AD____
(insert full name including all)
_____) ACCOUNTING
middle names--do not use initials) REPORT
and)
_____)
(insert full name including all)
_____)
middle names--do not use initials

In compliance with the provisions of C.C. 224r, the petitioners herein submit to the Court a full accounting report as follows:

1. Itemize all disbursements, with date of each payment, and
(Page 24)
agreements to disburse money (or anything else of value), paid by or on behalf of petitioners, or either of them, in connection with the birth, placement, medical or hospital care of the natural mother or child; also any other known expenses of either the natural parents or the child in connection with the adoption, including all attorneys fees paid or agreed to be paid.

2. Itemize all services and by whom rendered relating to the adoption or placement of the child received by petitioners for adoption. Show by whom said services were received or to be received, i.e.,

(a) petitioners
(b) either natural parent of the child
(c) the child
(d) any other person

3. Show names and addresses of each attorney, doctor, hospital, licensed adoption agency, or other person or organization who received any funds of the petitioners or participated in any way in the handling of such funds, either directly or indirectly.

There are no other disbursements of money or of anything of value, nor has any been promised or agreed to be paid, in connection with the birth of the child, placement of the child, medical or hospital care for the natural mother or for the child, or any other expenses of any kind whatsoever of the natural mother or the adoption.

We declare under penalty of perjury that the foregoing is true and correct, at _____ _____, California. (place of execution)

DATED: _____

_____

_____

Petitioners

2. Consent and Agreement by Petitioners.

The attorney should prepare, before the hearing, the required consent and Agreement to be signed by the petitioners. A printed form is available from the Clerk's office and is also available in the courtroom. A special printed form for the adoption of more than one child under the same petition (multiple) is also available. If the printed form is used, counsel should fill in the caption in advance of the hearing. C.C. 227 requires that the Agreement shall be executed or acknowledged in the Court's presence. The practice of individual judges may vary, but better practice is to leave the agreement unsigned and have the petitioners sign the agreement in the Court's presence.

SUGGESTED FORM OF CONSENT

(Note: A printed form is available from the County Clerk)

Prepare original and 1: original for Court
copy for attorney's file

_____

_____

Attorney

Address _____ Telephone _____

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In the matter of the Adoption) Petition of	) Case Number
	) AD - _____
	)
	)SINGLE CONSENT
	)AND AGREEMENT
	)(Form used if one
	) child is to be
Adopting Parent(s)	) adopted)

CONSENT AND AGREEMENT
(Independent and Agency)

We, the undersigned petitioners, husband and wife, hereby agree with the State of California and with the minor child named in the adoption petition or agency joinder that said child shall be adopted and treated in all respects as our own lawful child and shall enjoy all the rights of a natural child of our own issue, including the right of inheritance. We each consent to the adoption of said minor by the the other petitioner.

_____

Husband

_____

Wife

AGREEMENT
(Stepparent, Independent and Agency Adoption where there is one petitioner)

I, the undersigned petitioner, having petitioned the above entitled Court for approval of the adoption of the minor child named in the adoption or agency joinder herein, do hereby

agree with the State of California and with the said minor child that said child shall be adopted and treated in all respects as my own lawful child and shall enjoy all the rights of a natural child of my own issue, including the right of inheritance.

_____
Adopting Party

CONSENT OF CHILD

(To be signed if child is over 12 years of age)
I, the minor child who is the subject of this petition, do hereby consent to my adoption by petitioner(s).

_____
Name on Birth Certificate

Executed _____ 19____
In the presence of

_____
Judge of the Superior Court

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3. Decree of Adoption.

Counsel should also bring to the hearing a form of proposed decree of adoption, substantially in the following form:

(SUGGESTED FORM OF DECREE IN INDEPENDENT ADOPTION)

Prepare original + 1: original for Court
Copy for attorney's file

_____
Attorney for Petitioners

_____
Address
Telephone_____

SUPERIOR COURT OF THE STATE
OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In the Matter of the Adoption) NO.AD_____
Petition)
) DECREE OF
of_____) ADOPTION
)
and_____) (INDEPENDENT)
Adopting Parents)
)

The petition of_____ and_____ husband and wife, for the adoption of the minor child named in the petition herein, came on regularly this day for hearing, _____ appearing as attorney for the petitioners; and the petitioners and the said minor child appearing in person, and said persons having been examined separately by the court; and it appearing that the Los Angeles County Department of Adoptions has heretofore filed its written report recommending the granting of said petition, and evidence to the satisfaction of the Court having been introduced, the Court finds that:

All of the allegations in said petition are true; that petitioners were married on_____ 19____, and ever since have been and now are husband and wife; each of them is an adult person and more than ten years older than said minor

child; the minor child who is subject to this petition is a (male)(female) child born on _____ 19____, in the City of _____, County of _____, State of California.

(IF ONE OR BOTH PARENTS CONSENT)

That the consent(s) required by law under the facts of this case (has) (have) been given and filed in the manner required by law.

OR

(IF THERE IS A COMPANION ABANDONMENT ACTION)

That the Court in _____County in an abandonment proceeding numbered_____ found said child to be a person defined in Section 232 of the Civil Code and that said child was

declared and adjudged to be free from the custody and control of (his) (her) parent(s).

The petitioners have executed the requisite consent and agreement that the said child shall be adopted and treated in all respects as their own lawful child and the court, being satisfied that the interests and welfare of the minor will be promoted by the adoption proposed, and that the petition should be granted; now, therefore,

IT IS ORDERED that the petition is granted and said minor child is now the adopted child of petitioners _____ and _____ and shall be in the custody of said petitioners and be regarded and treated in all respects as their own lawful child; that they shall sustain toward the child and the child toward them the legal relation of parents and child, and each respectively shall have all of the rights and be subject to all of the duties of natural parent and child; and that the name of

said child shall henceforth be (insert full new name of child).

Dated:_____

_____
Judge

(NOTE: Slight changes to the above form, changing the plural to singular, will be necessary in a single parent adoption.)

4. Completion Procedure.

Although not required, good practice includes obtaining a certified copy of the decree for the permanent records of petitioners. The attorney should also assist in obtaining a new birth certificate. See page 97 for procedure in obtaining issuance of a new birth certificate.

APPENDIX C

CALIFORNIA CIVIL CODE § 224m-RELINQUISHMENT TO A LICENSED ADOPTION AGENCY

---

§224m. Relinquishment to Home-Finding Society.

The father or mother may relinquish a child to a licensed adoption agency for adoption by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of an organization licensed by the State Department of Health to find homes for children and place children in homes for adoption. Such relinquishment, when reciting that the person making it is entitled to the sole custody of the minor, shall, when duly acknowledged before such officer, be prima facie evidence of the right of the person making it to the sole custody of the child and such person's sole right to relinquish.

A parent who is a minor shall have the right to relinquish his or her child for adoption to a licensed adoption agency and such relinquishment shall not be subject to revocation by reason of such minority.

In cases where a father or mother of a child resides outside the State of California and such child is being cared for and is placed for adoption by an organization licensed by the State Department of Health to place children for adoption, such father or mother may relinquish the child to that organization by a written statement signed by such father or mother before a notary on a form

prescribed by the organization, and previously signed by an authorized official of the organization, which signifies the willingness of such organization to accept the relinquishment.

The relinquishment authorized by this section shall be of no effect whatsoever until a certified copy is filed with the State Department of Health, after which it is final and binding and may be rescinded only by the mutual consent of the adoption agency and the parent or parents relinquishing the child.

APPENDIX D

CALIFORNIA CIVIL CODE § 224n-PROSPECTIVE PARENTS FILE ADOPTION PETITION

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§224n. Responsibility of Agency.

The agency to which a child has been relinquished for adoption shall be responsible for the care of the child, and shall be entitled to the exclusive custody and control of the child at all times until a petition for adoption has been granted. Any placement for temporary care, or for adoption made by the agency, may be terminated at the discretion of the agency at any time prior to the granting of a petition for adoption. In the event of termination of any placement for temporary care or for adoption, the child shall be returned promptly to the physical custody of the agency.

No petition may be filed to adopt a child relinquished to a licensed adoption agency or child declared free from the custody and control of either or both of his parents and referred to a licensed adoption agency for adoptive placement, except by the prospective adoptive parents with whom the child has been placed for adoption by the adoption agency. After the petition for adoption has been filed, the agency may remove the child from the prospective adoptive parents only with the approval of the court, upon motion by the agency after notice to the prospective adoptive parents, supported by an affidavit or affidavits stating the grounds on which removal is sought. If an agency refuses to consent to the

adoption of a child by the person or persons with whom the agency placed the child for adoption, the superior court may nevertheless decree the adoption if it finds that the refusal to consent is not in the best interest of the child.

APPENDIX E

CALIFORNIA CIVIL CODE § 224 - PROVISION FOR CONSENT OF NATURAL PARENTS IN SPECIFIC CASES

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§224. Consent of Natural Parent-Feeble-Minded or Insane Parent Excepted.

A child having a presumed father under subdivision (a) of Section 7004 cannot be adopted without the consent of its parents if living; however, if one parent has been awarded custody by judicial decree, or has custody by agreement of the parents, and the other parent for a period of one year willfully fails to communicate with and to pay for the care, support, and education of such child when able to do so, then the parent having custody alone may consent to such adoption, but only after the parent not having custody has been served with a copy of a citation in the manner provided by law for the service of a summons in a civil action that requires him or her to appear at the time and place set for the appearance in court under Section 227; failure of a parent to pay for the care, support and education of such child for such period of one year or failure of a parent to communicate with such child for such period of one year is prima facie evidence that such failure was willful and without lawful excuse; nor a child with no presumed father under subdivision (a) of Section 7004 without the consent of its mother if living; except that the consent of a father or mother is not necessary in the following cases:

1. When such father or mother has been judicially deprived of the custody and control of such child (a) by order of the court declaring such child to be free from the custody and control of either or both of his parents pursuant to Chapter 4 (commencing with Section 232) of Title 2 of Part 3 of Division 1 of this code, or (b) by similar order of the court of another jurisdiction, pursuant to any law of that jurisdiction authorizing such order; or when such father or mother has, in a judicial proceeding in another jurisdiction, voluntarily surrendered his right to the custody and control of such child pursuant to any law of that jurisdiction provided for such surrender.

2. Where such father or mother of any child has deserted the child without provision for its identification.

3. Where such father or mother of any child has relinquished such child for adoption as provided in Section 224m; or where such father or mother has relinquished such child for adoption to a licensed or authorized child-placing agency in another jurisdiction pursuant to the law of that jurisdiction.

APPENDIX F

CALIFORNIA CIVIL CODE § 226 _ TAKING OF CONSENT TO AN ADOPTION

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§ 226. Petition for Adoption.

Any person desiring to adopt a child may for that purpose petition the superior court of the county in which the petitioner resides and the clerk of the court shall immediately notify the State Department of Health at Sacramento in writing of the pendency of the action and of any subsequent action taken. In all cases in which consent is required, except in the case of an adoption by a stepparent where one natural or adoptive parent retains his or her custody and control of the child, unless an agency licensed by the State Department of Health to find homes for children and place children in homes for adoption joins in the petition for adoption, the petition shall contain an allegation that the petitioners will file promptly with the department or the county adoption agency information required by the department in the investigation of the proposed adoption. The omission of such allegation from a petition so filed shall not, however, affect the jurisdiction of the court to proceed, nor shall it have heretofore affected the jurisdiction of any court to have proceeded, upon such petition omitting such allegation, in any manner provided in this chapter or otherwise, nor shall such omission have affected or affect the validity of any decree of adoption or other order heretofore or hereafter made by any court with respect to such petition omitting such allegation.

The caption of the petition for adoption of a minor shall contain the name or names of the petitioners but shall not contain the name of the minor. The petition shall contain the sex and date of birth of the minor. The name that the minor had prior to adoption shall appear in the petition or, in the case where a licensed adoption agency joins in the petition, the name may appear in the joinder signed by the adoption agency. The decree of adoption shall contain the adopted name of the minor but shall not contain the name that the minor had prior to adoption.

APPENDIX G

RONALD R. SILVERTON
3600 Wilshire Boulevard
Suite 220
Los Angeles, CA 90010
(213) 381-7511

In Pro Per

Nov 29 1977
Received for filing in
Clerk's Office
Court of Appeal
Second Appellate District

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

RONALD R. SILVERTON, Appellant, vs. STATE OF CALIFORNIA, Respondent.	NO. 2d Crim. 28211

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. NOTICE IS HEREBY GIVEN that RONALD R. SILVERTON, the appellant above named, hereby appeals to the Supreme Court

of the United States from the final order of the Court of Appeal of the State of California filed on July 15, 1977, affirming the judgment of conviction on Count VII by the California Superior Court sitting in Los Angeles County.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Appellant was convicted of the crime of "advertising for adoption without a license." in violation of California Civil Code Section 224p, was sentenced to six months in the county jail, and is presently enlarged on his own recognizance.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the entire record in the California Court of Appeal, Second Appellate District, including this "Notice of Appeal," and the opinion and judgment of said Court.

III. The following questions are presented by this appeal:

(1) Whether California Civil Code Section 224p is so facially overbroad as to infringe free speech as guaranteed by the First Amendment to the United States Constitution.

(2) Whether California Civil Code Section 224p, as applied to appellant, infringed on appellant's rights of free speech, as guaranteed by the First Amendment to the United States Constitution.

/s/ Ronald R. Silverton
RONALD R. SILVERTON
Pro Se

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I, JEWELL HORRID, depose and say that I am over the age of 18 years and not a party to the within action; my business address is 3600 Wilshire Boulevard, Suite 220, Los Angeles, California 90010.

That on the 29th day of November, 1977, all parties required to be served have been served. On said date I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on the STATE OF CALIFORNIA, appellee herein, by delivering the same to the receptionist at the Office of the California Attorney General, counsel of record for said STATE OF CALIFORNIA, located at 800 Tishman Building, 3580 Wilshire Boulevard, Los Angeles, California 90010.

/s/ Jewell Horrid
JEWELL HORRID

Subscribed and sworn to before me
this 29th day of November, 1977.

/s/ Mable Manning
Notary Public in and for said
County and State.
[Official Seal]
[MABLE MANNING
Notary Public - California
Principal Office in
Los Angeles County
My Commission Expires January 27, 1981]

A copy of the within "Notice of Appeal to the Supreme Court of the United States" has been received by the undersigned as authorized by the STATE OF CALIFORNIA Attorney General.

/s/ B. Fuller
Clerk at the Office of the State
of California Attorney General

800 Tishman Building
3580 Wilshire Boulevard
Los Angeles, CA 90010

DATED: 11-29, 1977

In the Supreme Court of the United States

October Term, 1977
No. 77-794

Supreme Court, U. S.
FILED
FEB 27 1978
MICHAEL RODAK, JR., CLERK

RONALD R. SILVERTON,
Appellant,

v.

STATE OF CALIFORNIA,
Appellee.

APPEAL FROM THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT

77-794

MOTION TO DISMISS OR AFFIRM

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In the Supreme Court of the United States

October Term, 1977
No. 77-794

RONALD R. SILVERTON,

Appellant,

v.

STATE OF CALIFORNIA,

Appellee.

MOTION TO DISMISS OR AFFIRM

The appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Court of Appeal of the State of California on the ground that the appeal does not present a substantial federal question.

OPINION BELOW

Appellant's judgement of conviction was affirmed in part and reversed in part by the Court of Appeal of the State of California, Second Appellate District, Division Four, on July 15, 1977. Appellant's Petition for Writ of Habeas Corpus was concurrently denied. The opinion was

certified for publication. (Jurisdictional Statement, Appendix A.) Petitions for rehearing filed by appellant and appellee State of California were denied. (Appendix A.) On September 8, 1977, the California Supreme Court denied petitions for hearing filed by appellant and appellee State of California. The Supreme Court ordered that the opinion filed by the Court of Appeal not be published in the official reports. (Appendix B.)

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(2).

QUESTION PRESENTED

Whether California Civil Code section 224p is unconstitutional as written or as applied to appellant on the grounds that it infringes constitutionally protected expression under the First and Fourteenth Amendments of the United States Constitution.

STATEMENT OF THE CASE

Appellant Ronald R. Silverton was convicted in Los Angeles County Superior Court of: (1) advertising for adoption without a license in violation of California Civil Code section 224p; (2) unlawful operation of a home-finding agency, in violation of California Health and Safety Code section 1310; [1] and (3) conspiracy to violate criminal laws in violation of California Penal Code section 182(1). (CT pp. 938-945, 1017.)

[1] Health & Saf. Code, § 1310, added by Stats. 1972, ch. 1148, § 3, p. 2226, and repealed by Stats. 1973, ch. 1202, § 1, p. 2564.

Appellant was sentenced to county jail for consecutive terms of six months and five months as to the convictions for violation of California Civil Code section 224p and California Health and Safety Code section 1310, respectively. As to the conviction for violation of California Penal Code section 182(1), appellant was granted probation for 3 years on condition that he serve 11 months in county jail concurrently with the sentence imposed on the other convictions. (CT pp. 1140-1141.)

On appeal, the judgment of conviction was reversed in part and affirmed in part by the Court of Appeal for the State of California, Second Appellate District, Division Four. (Jurisdictional Statement, Appendix A.) Petitions for rehearing filed by appellant and appellee State of California were denied. (Appendix A.) The California Supreme Court denied petitions for hearing filed by both parties. The Supreme Court ordered that the opinion filed by the Court of Appeal not be published in the official reports. (Appendix B.)

STATEMENT OF FACTS [2]

Approximately July 1973, appellant met with Norman and Beverly Minnis and stated that he was starting a business, Save A Life Adoption Service, and he would like Mr. Minnis to assist him in advertising and promotional efforts. Appellant stated that his plans concerned contacting pregnant girls who did not want to keep their children through newspaper advertisements and free clinics. The girls would be offered payment of medical expenses and employment outside of the United States.

[2] Since appellant has limited the issues presented before this Court, a presentation of the facts will be similarly limited.

Following the birth of the child, the girl would return to the United States and receive the money she had earned. (RT pages 302-303, 383.) Appellant and Mr. Minnis discussed the subject of advertising the service and appellant stated that he currently had such an advertisement in the Los Angeles Free Press. Appellant directed Minnis to place an advertisement for the service and they discussed it before and after it appeared in the Los Angeles Times. (RT pages 304, 308, 385, 397A, 415.) Appellant reimbursed the Minnises for expenses incurred in connection with promoting the adoption service. (RT pages 398, 400-401, 403, 406.) They were to receive $500 each for each pregnant girl referred to the service. (RT page 37.)

In October 1973, appellant telephoned Dr. Eugene Gould, a New York resident, and stated that he had learned that he wanted to adopt a child. (RT pages 977-978, 989-900, 1009.) Appellant stated that Gould would have to be prepared to come immediately to California to pick up the child and have $10,000 ready at that time to pay for the child. Gould told appellant that he did not have that amount of money available but requested to be put on a list. Appellant replied that Gould's name could not be put on a list until Gould had the money. (RT page 979.)

On October 3 through 7, 1973, and October 30, 1973, through November 5, 1973, the following advertisement appeared in the Los Angeles Times:

"PROBLEM PREGNANCY
MAY WE HELP?
Free prenatal & medical expenses
work suitable to pregnancy avail.
Save-A-Life Adoption Services
213/631-3109 collect 24 hrs."

(People's Exhibit 6B; RT pages 251-252.)

Neither appellant nor the Save A Life Adoption Service held a license or permit from the State Department of Health to place children for adoption. (RT page 1076.)

ARGUMENT

NEITHER ON ITS FACE NOR AS APPLIED TO APPELLANT DOES CALIFORNIA CIVIL CODE SECTION 224p INFRINGE CONSTITUTIONALLY PROTECTED SPEECH

Appellant contends that California Civil Code section 224p is unconstitutional both on its face and as applied to appellant on the grounds that it infringes the freedom of speech protection contained in the First Amendment of the United States Constitution.

California Civil Code section 224p provides:

> "Any person or organization that, without holding a valid and unrevoked license or permit to place children for adoption issued by the State Department of Health, advertises in any periodical or newspaper, by radio, or other public medium, that he or it will place children for adoption, or accept, supply, provide or obtain children for adoption, or that causes any advertisement to be published in or by any public medium soliciting, requesting, or asking for any child or children for adoption is guilty of a misdemeanor."

Appellee submits that Civil Code section 224p is part of the regulatory scheme affecting the area of adoptions. State regulation in this area is a valid exercise of the State's police power to prevent exploitation of adopting and/or natural parents by insuring that the decision to seek or provide a child for adoption is made without interference

by an unlicensed entity. Another statutory purpose is to foreclose media access to all unlicensed individuals, even those who are not operating as an organization, but who nonetheless seek to obtain or provide a child for adoption.

Statutes such as Civil Code section 224p give substance to the state's promotion of legitimate public interests. For purposes of First Amendment adjudication, the policies underlying the governmental regulation can be weighed against the asserted First Amendment claim and the specific conduct sought to be protected on the grounds of constitutional privilege. (See *Bates v. State Bar of Arizona* (1977) ____ U.S. ____ [53 L. Ed.2d 810, 823-835]; *Va. Pharmacy Bd. v. Va. Consumer Council* (1976) 425 U.S. 748, 761-770; *Bigelow v. Virginia* (1975) 421 U.S. 809, 818-829.)

In the present case, the constitutional challenge appellant asserts is directed against a statute which serves two distinct but related and equally important public interests. On both levels, Civil Code section 224p is incidental to legislative regulation of the "transfer of the legal status of parent and child from one parent to another." (6 Hastings L. J. 261, 298.) To effectuate that transfer, the state's regulatory system consists of state-licensed and supervised county adoption agencies, licensed and supervised private adoption agencies, and the investigative and administrative authority of the State Department of Health. Numerous statutes operate as regulations in the field of child placement. (See Civ. Code, § 221 et seq., Pen. Code, §§ 181, 273; Health & Saf. Code, § 1501 et seq.; Welf. & Inst. Code, § 16100 et seq.)

On one operative level, Civil Code section 224p reinforces the sanctions of other statutes which proscribe child placing except by licensed agencies or a natural parent. Civil Code section 224p accomplishes this

purpose by criminalizing those advertising efforts which would be a necessary adjunct to the operation of an unlawful adoption service. The unlicensed agency's contact with sources of supply and demand for children, the *sine qua non* of any adoption agency, is purposefully restrained by section 224p in order to effectuate the state's interest in overseeing the home-finding function.

On a second level, the advertising limitation of Civil Code section 224p insures that to the extent that any such informational technique is utilized, the source of the advertising will only be a state supervised licensee of the Department of Health. Neither the large scale unlicensed adoption service nor an individual parent or third party seeking placement for a specific child may employ advertisements. That a parent may independently place a child (Cal. Civ. Code, § 224q, *infra*, fn. 8), but may not advertise such placement (Cal. Civ. Code, § 224p), indicates a legislative intent to prevent the appearance of commodity-trading accompanying the legal transfer of a particular child by a biological parent.

Unlike the generalized notice of the availability of services of a licensed adoption agency, an advertisement regarding a particular child by a parent or any other person not even connected with an adoption "service" per se, would be grossly susceptible to the appearance of commodity-trading. That the Legislature intentionally sought to prevent this occurrence is evidenced by the fact that the advertising proscription against all parties except the licensed agency in California Civil Code section 224p immediately precedes Civil Code section 224q which enables a parent to independently place his or her child for adoption. Both statutes were originally written at the same time. (Stats. 1945, ch. 1317, §§ 2, 2.5, p. 2468.)

The two separate aims of section 224p combine to

promote the general public interest in the promotion of the welfare of children and the recognition of the adopting parent and child relationship created by a legal declaration of status. (*San Diego County Dept. of Public Welfare v. Superior Court*, 7 Cal.3d 1, 15 [101 Cal. Rptr. 541, 551, 496 P.2d 453, 463]; *Adoption of McDonald*, 43 Cal.2d 447, 459 [274 P.2d 860, 867]; *cf. Smith v. Organization of Foster Families* (1977) 431 U.S. 816, 845-846.) Clearly, this interest would be greatly impaired if organizations not authorized by the State Department of Health to operate in the adoption field, were to engage in advertising as a form of merchandising and promotion of an occupational venture.

The prevention of the potentially harmful effects of such calculated solicitation is a legitimate exercise of this state's "in parens patriae" authority. *Bigelow v. Virginia, supra,* 421 U.S. 809, 825-826, fn. 10; *Pittsburgh Press Co. v. Human Rel. Comm'n* (1973) 413 U.S. 376, 387-389.) Civil Code section 224p promotes the state's legitimate, comprehensive interest in the adoption function.

The specialized nature and dual purpose of the statute facilitates analysis of appellant's claim of First Amendment protection. As stated earlier, the sanction of Civil Code section 224p supports other criminal statutes in the adoption field. Section 224p proscribes advertising by any person other than a State Department of Health licensee. Participation in home-finding activities without the state license is specifically proscribed.[3] The illegality of the

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[3] At the time the advertisement was published, former California Health and Safety Code section 1310 provided in relevant part:

> "No person shall establish, conduct, or maintain in this state any facility without first obtaining a license therefor as provided in this chapter . . . . "

Former Health and Safety Code section 1250(a) provided in relevant part:

unlicensed activity is a critical factor in assessing appellant's claim.

In recent court decisions, an examination of a given advertisement in the context of the legal status of the advertised activity has proven to be determinative. In *Pittsburgh Press Co. v. Human Relations Commission, supra,* 413 U.S. 376, 389, this Court indicated that even "classic examples of commercial speech" receive some degree of First Amendment protection if the commercial proposal is legal. (*Id.*, at pp. 385-389.) Emphasizing the illegality of the advertisement there at issue, it was stated:

> " . . . any First Amendment interest which might be served by advertising an ordinary commercial proposal and which might arguably outweigh the governmental interest supporting the regulation is altogether absent when the commercial activity itself is illegal and the restriction on advertising is incidental to a valid limitation on economic activity." (*Id.*, at p. 389.)

Similarly in *Bigelow v. Virginia, supra,* 421 U.S. 809, the ruling that an abortion referral advertisement merited First Amendment protection was significantly affected by the fact that the subject matter of the advertisement referred to legal activity. This Court stated, "the place-

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> " 'Facility' means any hospital, institution, boarding home . . . homefinding agencies . . . . "

Former Health and Safety Code section 1250(d) provided:

> " 'Homefinding agencies' mean persons engaged in finding homes for children under 16 years of age, or placing such children in any home or other place either for temporary or permanent care or adoption." (Health & Saf. Code, § 1250, added by Stats. 1972, ch. 1148, § 3, p. 2226, and repealed by Stats. 1973, ch. 1202, § 1, p. 2564.)

ment services advertised in appellant's newspaper were legally provided in New York at that time." (*Id.*, at p. 822.)

In *Virginia Pharmacy Board v. Virginia Consumer Council, supra,* 425 U.S. 748, this Court reaffirmed that although "commercial speech" is not wholly outside the First and Fourteenth Amendments, there is a kind of purely commercial speech that lacks all First Amendment protection. This brand of speech includes that which proposes illegal activity. (*Cf. Pittsburgh Press Co. v. Human Rel. Comm'n, supra,* 413 U.S. 376.)

In the present case, the activity described and promoted in the Save A Life Adoption advertisement was simply, in effect, the solicitation of children for purposes of adoption by an unlicensed adoption service. The comprehensive system of statutory regulation devised by the Legislature provides that such proposals be advanced to the public solely by those licensed entities whose motive in placing the notice is coincident with the purpose of California adoption law generally.

The Save A Life Adoption Service was not a licensed agency. (RT page 1076.) It is clearly within this state's authority to regulate the adoption field by prescribing that conduct, such as that of appellant, is unlawful and therefore constitutionally unprotected. As applied to appellant, Civil Code section 224p does not violate the freedom of expression principle of the First Amendment.

The substantive evil addressed by Civil Code section 224p is the solicitation of sources of demand for and supply of children in a competitive adoption context. It is rationally calculated that such techniques, however indispensable to the allocation of commodities in a free enterprise system (*Bates v. State Bar of Arizona, supra,* _____ U.S. _____ [53 L. Ed.2d 810, 823]; *Va. Pharmacy Board v. Va. Consumer Council, supra,* 425 U.S.

748, 765), have no rightful place in the process of providing secure family environments for children.[4] To this end, the Legislature has provided criminal penalties for the unauthorized practice of adoption services. (See Statutes enumerated, *supra*, at p. 6) Civil Code section 224p proscribes the advertisement of such unauthorized, and therefore illegal activity, thereby bringing the statute squarely within the legitimate range of statutory power.

If the weight of the illegal activity factor is one basis for striking the First Amendment balance in favor of Civil Code section 224p, so too is the statute's second purpose: limiting resort to the media solely to state-licensed adoption services. As discussed, solicitation through the medium of advertising has a great potential for abuse because of the opportunity for wide audience dissemination available to the profiteer.[5] (*Supra*, pp. 6 - 8.)

Another threat connected with media solicitation of children or adoptive parents is more subjective but no less real. This is the threat inherent in the character of advertising as a form of product introduction. Use of advertising by private individuals, even a natural parent, to

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[4] One commentator has noted that "black market" operations are flourishing on an interstate and international scale along with a "gray market" technique involving payment of high fees to intermediaries with access to adoptable infants. (Bodenheimer, *New Trends and Requirements in Adoption Law and Proposals for Legislative Change*, 49 So.Cal. L. Rev. 10, 14-16.)

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[5] Since private adoption agencies are required by state law to operate on a nonprofit, philanthropic basis, it is reasonably concluded that avoidance of the state license requirement and attendant supervision and regulation is motivated by profit seeking. (See Cal. Admin. Code, title 22, div. 6, ch. 4, art. I, § 83003(b)(2)(4), formerly § 30743(b).)

effect a particular adoption would lead to the ineluctable comparison between the commodity-exchange methods of property ownership and the transfer of a child. Risk of this societal harm is equally deserving of the operation of the state's police power authority. As such, it is an implicit purpose of Civil Code section 224p.

Separate from the weight of the state's interest in preventing the illegal home-finding agency from flourishing, this significant second interest carries sufficient countervailing weight to overcome a First Amendment challenge. The sanction imposed by section 224p does not inhibit constitutionally protected conduct of either the unlicensed adoption service or the private person seeking specific child placement.

Appellant argues, however, that such protected conduct is deterred by Civil Code section 224p and assigns additional consitutional infirmity to the statute on the grounds of facial overbreadth and vagueness. Vague and overbroad statutes tend to deter privileged conduct because of the threat of legal sanction and to vest inordinate discretion in triers of fact who determine the application of that sanction. (*Grayned v. City of Rockford* (1972) 408 U.S. 104, 108-115.)

Respondent submits that an examination of Civil Code section 224p reveals no potential for the type of sweeping application which would suppress or deter protected speech. The narrow focus of the statute is directed against the specific evil of flagrant violations of adoption law promoted through advertising. In plain language, the statute prohibits the solicitation of child placement except by the licensed agency equipped with the training and investigatory tools to scrutinize and evaluate the termination and acquisition of parental rights and duties.

The proscriptive ambit of Civil Code section 224p has precisely defined boundaries. Simply put, only the organization, agency, or service permitted by law to place children for adoption may employ the medium of advertising. The statute clearly distinguishes between "conduct that may be proscribed and conduct that must be permitted." (*Broadrick v. Oklahoma* (1973) 413 U.S. 601, 607.)

Thus, although appellant must base his contention of facial overbreadth on the premise that the potential rights of hypothetical third parties are violated by the statute, the vicarious aspect of appellant's argument possesses no more merit than the challenge to the law as applied to appellant. There need be no concern for a "chilling effect"[6] on protected activity of others when the standard used in defining the legality of their conduct is as precise and readily apparent as that contained in Civil Code section 224p. The licensing requirement of the statute allows for no doubt as to those parties exempted from the advertising ban and those who are not. The statute, through its explicit licensing requirement, quite clearly does not lend itself to the substantial number of unconstitutional applications which signals an overbreadth flaw.[7]

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[6] See generally, Note, *The Chilling Effect in Constitutional Law*, 69 Colum. L. Rev. 808-832.

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[7] See, Note, *The First Amendment Overbreadth Doctrine*, 83 Harv. L. Rev. 844, 859.

Appellee submits that upon balancing the relative merits of appellant's assertion of constitutionally protected activity and the valid governmental interests promoted by Civil Code section 224p, it may be concluded that no First Amendment right is infringed by its application to appellant and that the statute is neither overbroad nor impermissibly vague.

CONCLUSION

For the foregoing reasons, appellee respectfully requests that the motion to dismiss or affirm be granted.

Respectfully submitted,

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APPENDIX

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

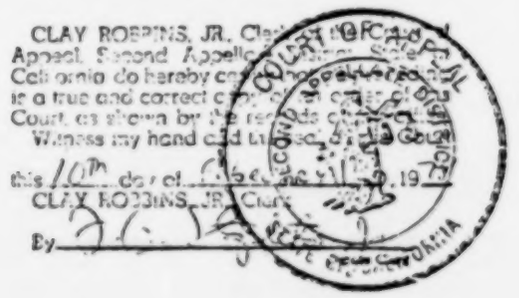
DIVISION FOUR

MINUTES OF DIVISION FOUR FOR JULY 26,1977:

2Crim. No. 28211 — PEOPLE vs. SILVERTON

THE COURT:

Petition for rehearing denied.(Appellant)
Petition for rehearing denied.(Respondent)



Appendix A

ORDER DUE
September 13, 1977

ORDER DENYING HEARING
AFTER JUDGEMENT BY THE COURT OF APPEAL

2nd District, Division 4, Crim. No. 28211
Crim. No. 30496

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

PEOPLE
v.
SILVERTON
- - - - - - - - - - - - - - - -
IN RE SILVERTON ON HABEAS CORPUS

SUPREME COURT
FILED
SEP 8 1977
G. E. BISHEL, Clerk
Deputy

Petitions for hearing DENIED.

The Reporter of Decisions is directed not to publish in the Official Appellate Reports the opinion in the above-entitled cause which was filed July 15, 1977 and appears in 71 Cal. App. 3d 790. (Cal. Const., Art., VI, section 14; Rule 976, Cal. Rules of Court.)

GIRD
Chief Justice

Appendix B

In the Supreme Court of the United States

October Term, 1977
No. 77-794

Supreme Court, U. S.
FILED
MAR 11 1978
MICHAEL RODAK, JR., CLERK

RONALD R. SILVERTON,
Appellant,

v.

STATE OF CALIFORNIA,
Appellee.

77-794

APPEAL FROM THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT

APPELLANT'S RESPONSE TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

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III

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In the Supreme Court of the United States

October Term, 1977
No. 77-794

RONALD R. SILVERTON,
Appellant,
v.
STATE OF CALIFORNIA,
Appellee.

APPELLANT'S RESPONSE TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

I

POSSIBLE MISCONCEPTIONS OF FACT FOSTERED BY APPELLEE'S MOTION TO DISMISS OR AFFIRM

1. Appellee states appellant was convicted of other than a violation of Civil Code § 224p — "advertising without a license." (AM - 2) In fact there was no other conviction that withstood appellate scrutiny (JS, page 18 [bottom] page 19 [top]).[1]

[1] Abbreviations used herein: JS — Appellant's Jurisdictional Statement; RI — Reporter's Transcript of first trial; AO — Appellate Court Opinion; AM — Appellee's Motion to Dismiss or Affirm.

2. Appellee inaccurately sets forth the advertisement constituting the basis of appellant's questionable conviction. (AM-4) What has been set forth by appellee is instead a "Copy of Order Form to Commence" (Index of People's Exhibits so describes Exhibit "6B" — Vol. 2 of RI, page xi). The advertisement in question, as set forth in People's Exhibit "9-D-1" — Vol. 2 of RI, page xiii; and RI 306 and 2712, and set forth verbatim at RI 286, 941 — and by the opinion of the Appellate Court here sought to be reversed (AO at A-5 of JS) is set forth in appellant's Jurisdictional Statement at page 9 thereof, in a quote from the here questioned Appellate Court opinion.

II

CALIFORNIA'S REGULATORY SCHEME INCLUDES INDEPENDENT ADOPTIONS. THE DISSEMINATION OF TRUE INFORMATION ABOUT INDEPENDENT ADOPTION AS AN ALTERNATIVE TO ABORTION, IS PROTECTED BY THE FIRST AMENDMENT.

Appellee contends (AM [bottom] pages 5, 6) that the State of California's regulatory scheme affecting the area of adoption may exclude newspaper solicitation with regard to independent adoptions. However, the California regulatory scheme expressly permits independent adoptions (see JS page 13, footnotes 2 and 3), and would probably be under a constitutional disability to prohibit them. *Smith v. Organization of Foster Families* (1977) 431 U.S. 816, 53 L.Ed.2d 14.[2]

Such a contention must be tested for consistency with the First Amendment (and its application to the states via the Fourteenth Amendment).

Is solicitation by newspaper to give information on independent adoptions, which are permitted by Civil Code § 224q (JS footnote 2), not a form of speech entitled to First Amendment protection, just as obscene or abusive language, threats, or fighting words are not protected? It is

---

[2] *Smith v. Organization of Foster Families* at 53 L.Ed.2d page 33:

> "Freedom of personal choice in matters of family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment [citations]. There does exist a private realm of family life which the state cannot enter [citations], that has been afforded both substantive and procedural protection."

well established that "[t]here are certain well defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problems . . . those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Chaplinsky v. New Hampshire* (1942) 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed.1031. It follows as a corollary that these utterances can be censored from the media. However, the "speech" here sought to be regulated by criminal sanctions is innocent, according to the State Appellate Court decision here under review, by any standard [3] and "pure" speech is to be accorded comprehensive, perhaps even absolute, protection limited only by the clear and present danger test. *Schenck v. U.S.* (1919) 249 U.S.47, 39 S.Ct.247, 63 L.Ed.47. When it is coupled with "conduct" it requires a balancing of the appellant's First Amendment rights, as in *Pittsburgh Press Co. v. Human Rel. Comm'n.* (1973) 413 U.S. 376; 37 L.Ed.2d 669; 93 S.Ct. 2553, wherein the Court stated:

> "We emphasize that nothing in our holding allows government at any level to forbid (the newspaper) to publish and distribute advertisements . . . nor, a fortiori, does our decision authorize any restriction whatever, whether on content or layout, on stories or commentary originated by (the newspaper), its columnists, or its contributors. On the contrary, we reaffirm unequivocally the protection afforded to editorial expression of views on these and other issues, however controversial. We hold only . . . that to prohibit placement in sex designated columns of advertisements . . . does not infringe First Amendment rights."

[3] AO page 5 [at top]:

> "Problem Pregnancy. May we help? Free prenatal care. Work suitable to pregnancy. Save-A-Life Adoption Service. 213/631-3109. 24 hours." "It is apparent that, to find any violation of the statute, one must look to the evidence." (As opposed to the expression itself.)

The regulation in the *Pittsburgh Press Co.* case, *supra*, was incidental to and co-extensive with the regulation of employment discrimination. But, in the instant case, there is no statute restricting adoption to agencies only, and if there were, probably it would be unconstitutional as interfering with familial privacy (see *Smith v. Organization of Foster Families, supra,* and the quote therefrom at footnote 2 herein).

The question, to put it simply, is whether any governmental agency can prohibit a person from stating in a newspaper that he will disseminate information on a subject upon which he is permitted to disseminate information. See *Street v. New York* (1969) 394 U.S. 576; 89 S.Ct.1354, 1365; 22 L.Ed.2d 572 (wherein the Court reversed a conviction for public desecration of the American flag).

Nor may free speech be abridged because of the actions of the listeners or readers. *Terminiello v. City of Chicago* (1949) 337 U.S.1, 93 L.Ed. 1131, 69 S.Ct.893.

Other cases show that when speech is coupled with solicitation it is no longer "pure" free speech and is to be tested by the balancing approach. In *Grayned v. City of Rockford* (1972) 408 U.S. 104, 33L.Ed.2d 222, 92 S.Ct. 2294, the Court states:

> "The right to use a public place for expressive activity may be restricted only for weighty reasons." (408 U.S. 115)

In that case, the Court considered reasonable "time, place and manner" regulations (408 U.S. 115, 116, 117).

In the instant case, the advertisement was identical to numerous other advertisements (though the content of the advertisements was the same, the purpose of the other advertisments was to disseminate information on abortion rather than adoption [People's Exhibit "6"]); and the California Court of Appeal, whose decision is here sought to be reviewed, stated in effect that neither the time, place, nor manner of placement was offensive, but rather:

> "It is apparent that, to find any violation of the statute, one must look to the evidence. This shows that defendant held no license or permit from the State Department of Health to run an adoption service and that the business of Save-A-Life (defendant) was obtaining children for adoption (A projected earnings record of this agency showed that it expected to make over $3 million in 24 months)." (AO page 5, 6)

However, if the intent of the statute is to punish defendant for holding no license or permit from the State Department of Health for engaging in the business of obtaining children for adoption, there is no necessity of encroaching on free speech interests. A statute making the obtaining of children for adoption without holding a license or permit from the State Department of Health criminal would be a sanction certain to punish such conduct. Such statutes are extant in California. Appellant was charged with a violation of that statute, but not convicted. (AO pages 2 and 3; page 10, second paragraph.)

The court said in *Broadrick v. Oklanoma* (1973) 413 U.S. 601, 37 L.Ed.2d 830, 93 S.Ct. 2908:

> "It has long been recognized that the First Amendment needs breathing space and that

> statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society. [citations] As a corollary, the Court has altered its traditional rules of standing to permit — in the First Amendment area — 'attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity.' *Dombrowski v. Pfister,* 380 U.S. at 486, 14 L. Ed.2d 22. Litigants, therefore, are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression.
>
> "Such claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate 'only spoken words.' [citations] In such cases, it has been the judgment of the Court that the possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted and perceived grievances left to fester because of the possible inhibitory effects of overly broad statutes.
>
> "The consequences of our departure from the traditional rule of standing in the First Amendment area is that any enforcement of a statute thus placed at issue is totally forbidden until and

unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression." (413 U.S. 612 at 613.)

The Court in that case, as well as its companion case of *CSC v. Letter Carriers* (1973) 413 U.S. 548, 37 L. Ed.2d 396, 93 S.Ct. 2880 (cited in AM page 15) held that the regulations aptly applied to conduct of the appellant, independent of any expression, and the expressions themselves were endorsements of political candidates and not, as in the instant case, solicitations to give information.

III

APPLYING CALIFORNIA CIVIL CODE SECTION 224p TO PREVENT SOLICITATION BY ADVERTISEMENT IN A NEWSPAPER OF INDEPENDANT ADOPTION AS AN ALTERNATIVE TO AN ABORTION, DEPRIVED APPELLANT OF HIS CONSTITUTIONAL GUARANTY OF FREE SPEECH

The public interest in information in the field of adoption is manifest:

> "More than half of Americans 15 to 19 years old have had sexual intercourse, Dr. Julius Richmond, assistant health, education and welfare secretary for health, has told a House subcommittee.
>
> "Eleven million of the 21 million persons in that age group have had sexual relations, he said.
>
> "One million teen-age girls become pregnant every year and 600,000 become mothers, he said.
>
> "If recent trends continue, more than 10% of

> AFDC (Aid to Families with Dependent Children) families will he headed by a woman 19 or younger, at a cost of more than $300 million dollars in federal welfare aid, he said."[4]
>
> "The adoption situation has changed radically in the past seven or eight years. Adoptions have substantially decreased. In California, agency adoptions have dropped from 8400 to 3200 per year in the period from 1968 to 1973, a decline of 62 percent. Independent, nonagency adoptions have decreased from 4000 to 2200 per year, or 46 percent during the same period. (Thus, independent adoptions now comprise more than 40 percent of total adoptions.) This major change is taking place despite a continuing unsatisfied demand for adoptable children; because of (among other things) increased use of abortion."[5]

And yet, appellee argues against access to the media by persons engaged in an independent adoption or in offering an arguably better alternative to an abortion than now exists, on the theory that it would be "grossly susceptible to the appearance of commodity trading. . . ." (AM 7), and that such access would provide:

> ". . . ineluctable comparison between the commodity exchange methods of property ownership and the transfer of a child." (AM 12)

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[4] Published on Sunday, March 5, 1978, in the *Los Angeles Times*, from the United Press International news source in Washington, D.C.

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[5] "New Trends and Requirements in Adoption Law and Proposals for Legislative Change," (1975) 49 So. Cal. L.Rev. 10, at page 13, Brigette N. Bodenheimer, Professor of Law, University of California, Davis, prepared to provide the California Law Revision Commission with background information for its study of adoption law.

The comparison to commodity trading is a peril not restricted alone to independent adoptions:

> "Adoption agencies are hard hit by the highly competitive adoption situation. In order to satisfy their long-waiting applicants, they may turn to any means compatible with the letter of the law to locate the necessary children. The situation is fraught with danger for children who run the risk of becoming *commodities on the market* or pawns shifted around to satisfy agency waiting lists or to meet the objectives of state reorientation programs." (Emphasis added.) (Numerous citations to various California cases were given) ("New Trends and Requirements in Adoption Law and Proposals for Legislative Change," pages 15-16 - see footnote 5 supra.)

The advertisement in question in the instant case, according to the Appellate Court decision here sought to be reviewed, clearly is not on its face an advertisement that appellant will place, accept, supply, provide, or obtain children for adoption. The ad acquired significance according to the Appellate Court only by reference to other activities of the appellant (AO 5). (See JS page 20 for citations to the record wherein the trial court eschewed any necessity for a culpable state of mind with regard to a conviction for the violation of the here questioned statute.)

"These other activities", as set forth in the appellate court opinion here to be reviewed, were obtaining children for adoption without having a license from the State Department of Health to run an adoption service (AO 5 — top paragraph). However, the conduct of the appellant in "obtaining children for adoption" resulted in no conviction (the appellant was charged with such a crime — see AO 3, 4). Appellant at all times contended that he

operated his service by assisting pregnant women, who did not want to keep their child, find parents who desired to adopt the child, as an alternative to an abortion. Such activity required no license and was legal, moral, and ethical. (RI 23-61.)

To make it attractive for a pregnant woman to give up her unwanted child for adoption instead of getting an abortion, appellant offered these pregnant women the opportunity to have reasonable maintenance, their medical treatment paid for by his service, and a choice of parents for the child. When the child was born, the mother could change her mind and keep the child without any obligation to appellant's service. To be able to make the program pay for itself, appellant charged fees of $10,000 to adopting parents; since each consummated adoption had to cover the cost attendant on at least three other pregnant woman who kept their child. (At the trial appellant sought to introduce evidence that each licensed adoption agency cost the taxpayers of California more than $10,000 — RI page 3456, line 13 to page 3459, line 20; page 3481, line 22 to page 3484, line 4.)

If the mother of the newly born child desired to go forward with the adoption, she went before a judge of the Superior Court (highest trial court) in the County in which she resided, and signed a consent to the adoption. The adopting parents would then take the child and institute adoption proceedings through the courts of the state and county in which they resided. (RI pages 23-61).

Appellee, in its motion, cites three cases as giving sacrosanct status to an agency adoption over and above the independent adoption and suggested that only those authorized by the Department of Social Welfare should operate in the adoption field as an occupational venture (AM 8). However, none of those cases mentioned the

statute here in question, Civil Code § 224p; and to the contrary, each seems to state that the status of the independent adoption is at least equal to that of the agency adoption. These cases are:

1. San Diego County Dept. of Public Welfare v. Superior Court (1972) 7 C.3d 1, 496 P.2d 453 (AM 8).

> ". . . the social worker in the instant case may have been a little over zealous in an attempt to induce the natural mother to refuse to consent to the adoption by the Real Parties in Interest and to relinquish the child to the Department. . . . [4] " (Footnote "4" refers to "Bodenheimer, The Multiplicity of Child Custody Proceedings — Problems of California Law, 23 Stan. L. Rev.703, 717, wherein the author states that "with respect to independent adoptions, adoption agencies. . . are supposed to be guided solely by what is most beneficial to the child entrusted to them (but). . . develop the conviction at times that their decisions and choices concerning a child's future are superior to those of" (the parents who desire the independent adoption).
>
> "We (the California Supreme Court) cannot assume that adoption agencies will necessarily in all cases have such wisdom and competence that they may be set apart from other custodians and given carte blanche in their control of relinquished children until a petition for adoption is before the court." (7 C.3d at 10).

The *San Diego County Dept. of Public Welfare* case (above), on page 14 of the Court's opinion quotes as follows the case of *In Adoption of McDonald, infra.*

> **2. "In Adoption of McDonald (1954) 43 C.2d 447; 274 P.2d 860) (Am 8),** no requirement of agency consent to an adoption of a child

> relinquished to it can be reasonably implied from the adoption statutes."

3. Smith v. Organization of Foster Families, supra,(AM 8) is quoted in footnote 2 above and seems to be in favor of appellant's position, since in the instant case it is clear that procedural protection may be afforded appellant's liberty interest without derogating from the substantive liberty of another.

A study prepared for the California Legislature in 1975 concludes:

> "Periodically the suggestion is made that independent, nonagency placements for adoption be banned altogether as the only sure means of eliminating black market and other illegal dealings in children. This course of action, which has been followed by very few states, is not recommended here. It has not been established that agency placements are generally more beneficial to children than private placements. Moreover, agency monopoly over adoptive placements has distinct drawbacks. Competition with private placements has been found to have salutary effects on the efficiency of agency procedures. There is an advantage in maintaining the two types of adoptions side by side, with each keeping a check on the other.
>
> "Additional legislation to control black and gray market adoptions is not recommended at this time. Violators of the laws presently in force are seldom prosecuted, nor are physicians or lawyers engaged in illegal adoption practices often subjected to disciplinary proceedings by their professions." [6]

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6 "New Trends and Requirements in Adoption Law and Proposals for Legislative Change", at page 108, see footnote 5 herein.

IV

THE JUDGMENT THAT APPELLANT BE INCARCERATED FOR PLACING AN ADVERTISEMENT SOLICITING PREGNANT WOMEN TO OBTAIN INFORMATION ABOUT INDEPENDENT ADOPTION AS AN ALTERNATIVE TO AN ABORTION, SUBSTANTIALLY PENALIZES SOCIETY

Information on matters of social importance, especially those relating to the marriage relation and the exercise of rights arising from that relationship (common sense tells us that the overwhelming majority of those who seek to adopt are married), is given extensive Constitutional protection. *Griswold v. Connecticut* (1965) 381 U.S. 479; 85 S. Ct. 1678, 14 L.Ed.2d 510.

By seeking to give such information, appellant has been convicted and sentenced to six months incarceration (AO 5).

California Penal Code § 19 provides for maximum sentencing of imprisonment in the County Jail for six months for each misdemeanor conviction. To be given the maximum sentence on a misdemeanor conviction would seem to rationally call for the crime upon which the defendant is convicted to be a "true crime" as distinguished from "regulatory crime" or "public welfare offense."

The Court, by instructions to the jury and in its decisions as to what evidence to permit the jury to hear, would not consider state of mind (*mens rea)* (See JS 20-30), despite the case of *Morissette v. United States* (1952) 342 U.S. 246, 72 S. Ct.240, 96 L. Ed.288 (elaborate historical review of the requirement of *mens rea* for the application of criminal sanction). The court in that case stated that:

> "A relation between some mental element and punishment for a harmful act is almost as instinctive as a child's familiar exculpatory 'but I didn't mean to,' and has afforded the rational basis for a tardy and unfinished substitution of deterrents and reformation in place of retaliation and vengeance as the motivation for public prosecution.
>
> ". . . [I]t is as universal and persistent in mature systems of law as a belief in freedom of human will and a consequent ability and duty of a normal individual to choose between good and evil (for there to be) a relation between some mental element and punishment for a harmful act. . . ." (72 S. Ct. at 243)

The consideration of this instant case by the United States Supreme Court is important far beyond the effect on this individual appellant.

> ". . . [T]he statutory law of adoption in California and other states, enacted over 100 years ago, is overgrown with patchwork amendments which made it difficult for anyone, including experienced lawyers, to find their way through the maze of its provisions."[7]
>
> "California's adoption statute in particular also suffers from unclear and inconsistent provisions, the result of innumerable patchwork amendments made at various times during the hundred

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[7] "New Trends and Requirements in Adoption Law and Proposals for Legislative Change", at page 12, see footnote 5 herein.

> years of its existence. A complete overhaul of the California law would seem to be in order."[8]

A reversal of the conviction of appellant in the instant case can serve as a starting point for rewriting the California law.

Respectfully submitted,

RONALD R. SILVERTON

Pro Se

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[8] "New Trends and Requirements on Adoption Law and Proposals for Legislative Change", at page 109, see footnote 5 herein.